

REMARKS

A. Status of the Claims

Claims 1-24 and 27-30 were pending at the time of the Action. Claim 1 has been amended. Claims 5 and 25-26 have been canceled. Claims 3, 4, 6, 7, 9-24 and 27-30 are currently withdrawn. Claims 31 and 32 have been added. Support for the amendments and the new claims is found throughout the specification and the original claims, for example on page 14 and 98. Therefore, claims 1, 2, 8, 31, and 32 are currently pending and presented herein for reconsideration.

B. Species Election Requirement

Applicant affirms the oral species election of the ectophosphatase inhibitor of Formula II made without traverse on November 14, 2008.

C. Indefinite Rejections

Claims 1, 2, 5, and 8 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for reference to Table 1 and Formulae I-XX. Applicants respectfully traverse.

Claim 1 currently recites “[a] cytotoxic composition comprising an ectophosphatase inhibitor and a cytotoxic agent, wherein the cytotoxic agent is a fungicide.” Therefore, the rejection as to claim 1 is moot.

Claim 8 is directed to “[t]he cytotoxic composition of claim 1, wherein the ectophosphatase inhibitor is selected from the group consisting of the compounds of formulae I-XX.” The incorporation into the claims by reference to a table or drawing may be permitted in certain occasions. For example, incorporation by reference to a specific table or figure is permitted “where it is more concise to incorporate by reference than duplicating a drawing or

table into the claims.” *Ex parte Fressola*, 27 U.S.P.Q.2D (BNA) 1608. Here, one of skill in the art would understand that the claim encompasses a composition comprising a fungicide and an ectophosphatase inhibitor having one of the specified formulas. Withdrawal of the rejection is respectfully requested.

D. The Anticipation Rejection Is Moot

Claims 1, 2, 5, and 8 are rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Windsor *et al.* (WO 02/20726) as evidenced by Valcke. Applicant respectfully traverses.

WO 02/20726 is not prior art to the claimed invention. As an initial point, Applicant respectfully notes that the reference is not prior art under 35 U.S.C. § 102(b). Specifically, WO 02/20726 was first published on March 14, 2002, which was less than one year prior to the October 16, 2002 priority date of the current application. Therefore, WO 02/20726 would only be available as prior art under 35 U.S.C. § 102(a) or (e).

Furthermore, WO 02/20726 is not prior art under § 102(a) or (e), as it is not “by others.” In particular, WO 02/20726 and U.S. application U.S. 2002/0077365 were both filed on September 7, 2001, both claim priority to the same provisional application, U.S. Ser. No. 60/231,088, and both indicated Brian J. Windsor, Stan J. Roux, Alan M. Lloyd as the inventors when the application was filed. Thus, the currently cited PCT Publication is the foreign counterpart to U.S. 2002/0077365. The inventorship of U.S. 2002/0077365 was later corrected to indicate that the inventors are Brian J. Windsor, Stan J. Roux, Alan M. Lloyd, and Collin E. Thomas, as demonstrated by the Petition under 37 C.F.R. § 1.48(a) attached as Exhibit A. Thus, the proper inventorship of WO 02/20726 is Brian J. Windsor, Stan J. Roux, Alan M. Lloyd, and Collin E. Thomas, although the PCT application was not corrected because it was not nationalized. Therefore, there is complete identity of authorship of the subject matter of WO

02/20726 and inventorship of the current application, WO 02/20726 is not a printed publication by **another**, and thus is not available under 35 U.S.C. § 102(a) or (e).

In light of the above, the anticipation rejection is moot. Withdrawal thereof is respectfully requested.

E. Conclusion

The Examiner is invited to contact the undersigned at (512) 536-3123 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tamsen L. Barrett".

Tamsen L. Barrett
Reg. No. 57,318
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201

Date: May 19, 2009

EXHIBIT A



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#7
M.M.
12/3/02
PATENT

RECEIVED

NOV 22 2002

TECH CENTER 1600/2900

In re Application of:

J. Brian Windsor et al.

Serial No.: 09/949,268

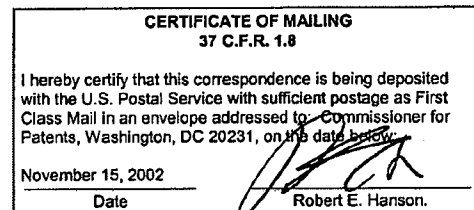
Filed: September 7, 2001

For: METHOD FOR INCREASING THE
EFFECTIVENESS OF ANTIINFECTIVE
AGENTS

Group Art Unit: 1614

Examiner: Unknown

Atty. Dkt. No.: TEXG:007US/REH



CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited
with the U.S. Postal Service with sufficient postage as First
Class Mail in an envelope addressed to: Commissioner for
Patents, Washington, DC 20231, on the date below:

November 15, 2002

Date

Robert E. Hanson.

PETITION UNDER 37 C.F.R. §1.48(a)

Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicant hereby petitions under 37 C.F.R. §1.48(a) for the correction of inventorship in the instant case. Pursuant to 37 C.F.R. §1.48(a)(1), the requested change comprises the addition of Collin E. Thomas as an inventor. The following items are being submitted herewith pursuant to 37 C.F.R. §1.48(a)(2-4):

- (1) a statement by Collin E. Thomas pursuant to 37 C.F.R. §1.48(a)(2);
- (2) a Declaration by the actual inventors submitted pursuant to 37 C.F.R. §1.48(a)(3);
- (3) a check in the amount of the processing fee under 37 C.F.R. §1.17(i); and

11/21/2002 SZELMIE1 00000060 09949268

01 FC:1450

130.00 00

25208018.1

(4) permission by the assignee to correct inventorship submitted pursuant to 37 C.F.R. §1.48(a)(5).

In view of the foregoing, correction of the inventorship in the case is respectfully requested. If the check is inadvertently omitted, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Commissioner is authorized to deduct or credit said fees from or to Fulbright & Jaworski Deposit Account No.: 50-1212/10108060/10056.

Respectfully submitted,



Robert E. Hanson
Reg. No. 42,628
Attorney for Applicant

FULBRIGHT & JAWORSKI, L.L.P.
600 Congress Ave., Ste. 1900
Austin, Texas 78701
(512)536-4598

Date: November 15, 2002



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

NOV 22 2002

TECH CENTER 1600/2900

In re Application of:
J. Brian Windsor et al.

Serial No.: 09/949,268

Filed: September 7, 2001

For: METHOD FOR INCREASING THE
EFFECTIVENESS OF ANTIINFECTIVE
AGENTS

Group Art Unit: 1614

Examiner: Unknown

Atty. Dkt. No.: TEXG:007US/REH

<p>CERTIFICATE OF MAILING 37 C.F.R. 1.8</p> <p>I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on the date below:</p> <p><u>11/15/02</u> Date</p> <p><u>Robert E. Hanson</u> Robert E. Hanson</p>
--

STATEMENT OF COLLIN E. THOMAS UNDER 37 C.F.R §1.48(a)

I, Collin E. Thomas, hereby state the following:

1. I was not originally named as an inventor of the above-referenced patent application.
2. The failure to originally name me as an inventor occurred without deceptive intent on my part.

Collin E. Thomas
Collin E. Thomas

9/23/02
Date



32425
PATENT TRADEMARK OFFICE

PATENT
TEXG:007US

SUBSTITUTE DECLARATION

RECEIVED

NOV 2 2 2002

TECH CENTER 1600/2900

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or the below named inventors are the original, first and joint inventors (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled **METHOD FOR INCREASING THE EFFECTIVENESS OF ANTIINFECTIVE AGENTS**, the Specification of which:

- ☐ is attached hereto.
☒ was filed on **September 7, 2001** as Application Serial No. **09/949,268**.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims.

I acknowledge the duty to disclose to the Patent and Trademark Office all information known to me to be material to patentability of the subject matter claimed in this application, as "materiality" is defined in Title 37, Code of Federal Regulations, § 1.56.

I hereby claim priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent, United States provisional application(s), or inventor's certificate listed below and have also identified below any foreign application for patent, United States provisional application, or inventor's certificate having a filing date before that of the application on which priority is claimed:

PRIORITY APPLICATION(S)			Priority Claimed
60/231,088	USA	September 8, 2000	YES
(Number)	(Country)	(Date Filed)	Yes/No
(Number)	(Country)	(Date Filed)	Yes/No

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below or any PCT international application(s) designating the United States listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose all information known to me to be material to patentability of the subject matter claimed in this application, as "materiality" is defined in Title 37, Code of Federal Regulations, § 1.56,

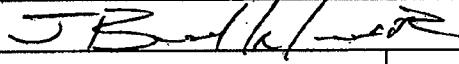
which become available between the filing date of the prior application and the national or PCT international filing date of this application: NONE.

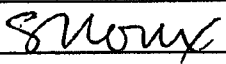
(Application Serial No.)	(Filing Date)	(Status)
--------------------------	---------------	----------

(Application Serial No.)	(Filing Date)	(Status)
--------------------------	---------------	----------

I hereby direct that all correspondence and telephone calls be addressed to Robert E. Hanson, Fulbright & Jaworski L.L.P., 600 Congress Avenue, Suite 2400, Austin, Texas 78701, (512) 474-5201.

I HEREBY DECLARE THAT ALL STATEMENTS MADE OF MY OWN KNOWLEDGE ARE TRUE AND THAT ALL STATEMENTS MADE ON INFORMATION AND BELIEF ARE BELIEVED TO BE TRUE; AND FURTHER THAT THESE STATEMENTS WERE MADE WITH THE KNOWLEDGE THAT WILLFUL FALSE STATEMENTS AND THE LIKE SO MADE ARE PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH, UNDER SECTION 1001 OF TITLE 18 OF THE UNITED STATES CODE AND THAT SUCH WILLFUL FALSE STATEMENTS MAY JEOPARDIZE THE VALIDITY OF THE APPLICATION OR ANY PATENT ISSUED THEREON.

Inventor's Full Name:	J.	Brian	Windsor
Inventor's Signature:			
Country of Citizenship:	USA	Date:	9.19.02
Residence Address: (street, number, city, state, and/or country)	1006 Banister Lane #609 Austin, TX 78704		
Post Office Address: (if different from above)			

Inventor's Full Name:	Stan	J.	Roux
Inventor's Signature:			
Country of Citizenship:	USA	Date:	9/25/02
Residence Address: (street, number, city, state, and/or country)	8510 Forest Heights Lane Austin, TX 78749-3505		
Post Office Address: (if different from above)			

Inventor's Full Name:	Alan	M.	Lloyd
Inventor's Signature:	<i>Alan M. Lloyd</i>		
Country of Citizenship:	USA	Date:	<i>7/18/02</i>
Residence Address: (street, number, city, state, and/or country)	2505 Forest Bend Drive Austin, TX 78704		
Post Office Address: (if different from above)			

Inventor's Full Name:	Collin	E.	Thomas
Inventor's Signature:	<i>Collin E. Thomas</i>		
Country of Citizenship:	USA	Date:	<i>10/25/02</i>
Residence Address: (street, number, city, state, and/or country)	1230 York Avenue #219 New York, NY 10021		
Post Office Address: (if different from above)			



PATENT

TECH CENTER 1600/2900

NOV 22 2002

RECEIVED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
J. Brian Windsor et al.

Serial No.: 09/949,268

Filed: September 7, 2001

For: METHOD FOR INCREASING THE
EFFECTIVENESS OF ANTIINFECTIVE
AGENTS

Group Art Unit: 1614

Examiner: Unknown

Atty. Dkt. No.: TEXG:007US/REH

CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231, on the date below:

11/15/02
Date

Signature

PERMISSION OF ASSIGNEE TO CORRECT INVENTORSHIP

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

The undersigned hereby grants permission on behalf of the Board of Regents, University of Texas System to correct the inventorship in the case by adding Collin E. Thomas as an inventor. The Board of Regents, University of Texas System is the Assignee of the instant case (Reel 012527, Frame 0653).

BOARD OF REGENTS, THE UNIVERSITY
OF TEXAS SYSTEM

NOV 11 2002
Date: _____

By:
Cullen M. Godfrey
Vice Chancellor and General Counsel